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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,600

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EXAMINER

WATTS, JENNA A

ART UNIT

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1794

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/537,600	Applicant(s) BOWS ET AL.	
	Examiner JENNA A. WATTS	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I in the reply filed on 1/27/2009 is acknowledged.
2. It is acknowledged that new Claim 20 falls within the elected Group I.
3. Claim 19 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/27/2009.
4. The restriction is therefore deemed proper, and made final.

Rejections

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Claim Objections

6. Claims 1 and 5 are objected to because of the following informalities: Regarding Claim 1, the phrase "contact areas" in parentheses on Line 7 of the claim appears to be a typographical error and should be removed from the claim. Regarding Claim 5, a period is missing at the end of the claim on Line 2. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. Claims 1, 3-9, 12, 14, 16 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et al. (U.S. Patent No. 4,911,938).

8. Regarding Claims 1, 3 and 4, Fisher teaches a food product for microwave cooking comprising a frozen uncooked puffed pastry cereal dough (Column 3, line 12, 24-28 and lines 32-33) that wraps around and completely seals a filling (Column 3, lines 19-21, 24-27 and Figure 11) and expands on heating (Column 3, lines 29-31 and Figure 2), the cereal dough being contained in a sealed package which remains sealed during microwave cooking by utilizing different seals, namely optically opaque and clear seals (Column 7, lines 33-40 and Figures 6 and 7). Fisher teaches that upon heating, the optically opaque portion (Reference 37) of the seal, which includes the microwave susceptor material (Reference 23) (Column 7, lines 34-35 and Reference Numbers 23 and 37 on Figure 6), peels open under the influence of both the temperature and the pressure exerted by the expanding pastry (Column 7, lines 35-37) and when the non-susceptive optically clear portion (Reference 35) is reached (see Reference Number 35 on Figure 6), peeling ceases and the expansion of the pastry at the seal stops (Column 7, lines 38-40). Thus, the package is sealed around the outside of the package during microwave heating.

9. Fisher further teaches that the package is dimensioned such that there is free volume within the package defined by the internal surface of the package and by the optically opaque seals that release as the pastry rises (see Figures 6 and 7 and free volume illustrated in Figure 6). Fisher further teaches that the free volume is such that

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when the cereal dough is cooked by the microwave heating, the cereal dough expands and contacts areas of said internal surface (Figure 7) so that the shape of the cooked cereal dough is defined, at least in part, by said contact areas. Fisher further teaches that the package comprises susceptor material in at least some of said contact areas to cause browning and/or crisping of the cereal dough during microwave cooking (Column 7, lines 40-44 and Reference Number 23 on Figure 7).

10. Fisher further teaches that the upper surface of the cereal dough contacts the internal surface of the package when the cereal dough is cooked (see Figure 7) and that the package which is in contact with the upper surface of the cereal dough contains susceptor material which causes browning and/or crisping of the upper dough surface during microwave cooking (Column 4, lines 53-54 and Column 5, lines 59-61). Fisher further teaches that the pastry expands fully while it is being browned and crisped by the heat from the susceptor film, which remains conformed to the surface of the food (Column 7, lines 6-8) and further teaches that the microwave susceptor material extends over at least the portion of the film which is to be wrapped about the food and may preferably be applied to the entire surface of the film (Column 4, lines 53-54 and Column 5, lines 59-61), thus it can be seen from Figure 7 that the upper surface of the film, which contacts the dough, has microwave susceptor material and that the entire the upper surface of the dough (100%) would be browned by contact with such material.

11. Regarding Claims 5, 6 and 14, Fisher further teaches that at the end of cooking, an apple turnover has expanded and is browned, crisped and flaky (Column 9, lines 25-

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26). Fisher further teaches the fillings can be fruit or vegetable and can have syrups, sugar, spices, and the like, to enhance flavor (Column 3, lines 19-23), thus a savory or sweet filling is taught. An apple turnover is deemed a fruit pie because it contains a dough and a fruit filling.

12. Regarding Claim 7, Fisher teaches a sweet filling containing syrups, sugar, etc. (Column 3, lines 21-22), which would constitute a liquid having theological properties so that it would remain in the product after cooking since a sugar syrup would not be expected to evaporate from the product, absent any evidence to the contrary. Applicant discloses in the specification that the filling may comprise a liquid, for example a sauce which could be sweet (see instant application, Page 6, lines 10-20).

13. Regarding Claim 8, Fisher teaches that the package comprises a flexible sheet material such as a film (see Figure 3, Column 3, lines 32-33, and 46-48).

14. Regarding Claim 9, Fisher teaches that an uncooked apple turnover is placed in an open pouch formed from susceptor film (Column 9, lines 2-3). The long folded edge of the turnover is placed against the seal and the pouch is sealed around the remainder of the turnover by using the iron, to seal the susceptor material to itself along the two short crimped edges of the turnover (Column 9, lines 4-8).

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15. Regarding Claim 12, Fisher teaches that the microwave susceptor material extends over at least the portion of the film which is to be wrapped about the food and may preferably be applied to the entire surface of the film (Column 4, lines 53-54 and Column 5, lines 59-61).

16. Regarding Claim 13, Fisher teaches the use of opaque films that are suitable if they exhibit the desired properties of heat generation and dissipation (Column 5, lines 40-41) and further teaches that the susceptor flake materials, for use in the susceptor layer, can be applied to the film in to or more separate passes, which also provides an improvement in the degree of uniformity of heating (Column 5, lines 25-28). Since Applicant discloses that antenna material are used to control the cooking characteristics of the package and improve the uniformity of product heating and/or browning (see instant application, Page 8, line 7 and 14-16), Fisher is deemed to teach the use of antenna material in the package.

17. Regarding Claim 16, Fisher teaches that a frozen turnover prepared with puff pastry is packaged and sealed (Column 9, lines 1-2), therefore, it would be expected that the dough product is frozen or maintained in a frozen state after packaging. Furthermore, the introduction of specific processing parameters to a product claim would not materially affect the patentability of such a product claim.

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18. Regarding Claim 20, Fisher is taken as cited above in the rejection of Claim 1 and teaches a food product wherein when the cereal dough is cooked by microwave heating, the cereal dough expands to occupy all the free volume within the package (see Figure 7). Furthermore, the introduction of specific processing parameters to a product claim would not materially affect the patentability of such a product claim.

Claim Rejections - 35 USC § 103

19. Claims 10, 11, 13, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (U.S. Patent No. 4,911,938) in view of Sadek (U.S. Patent No. 6,359,272).

20. Fisher is taken as cited above for the rejection of Claim 1.

21. Regarding Claim 10, Fisher teaches that there are many possible ways to prepare the package of their invention and many different geometries are possible, but does not teach the use of a box or carton.

22. Sadek teaches a dough enrobed or stuffed food product (Column 5, lines 58-60) that is cooked in a microwaveable package until baked and/or browned (Column 3, lines 13-16), comprising a base forming a tray providing a food contact surface (Column 3, lines 18-19) and a lid shaped and configured to enclose the cavity, the lid having a latching tab to fix the lid in place when closed (Column 3, lines 20-21 and 36). Sadek further teaches that the food is enclosed on all sides by a susceptor layer (Column 33-34). Sadek further teaches the package is in the form of a box or carton (see Figure 3) and Sadek teaches the use of paperboard which is strong, easily handled, can be

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further printed with suitable graphics and text and is also structurally and dimensionally stable when exposed to microwave energy (Column 6, lines 29-35).

23. Therefore, it would have been obvious for the packaging as taught by Fisher to have been in the form of a box or carton, as taught by Sadek, because Sadek teaches that using a box or carton allows for the use of paperboard which is strong, easily handled and is structurally and dimensionally stable when exposed to microwave energy. One of ordinary skill in the art would have been motivated to use packaging in the form of a box or carton in order to allow for marketing information directly on the packaging, as well as to ensure that the packaging stands up to the pressures of microwave energy, and does not shrink or shrivel during microwave heating.

24. Regarding Claim 11, Fisher teaches that it has been found helpful to locate the package during cooking on an inverted paper plate or other such object in order to ensure that the package is elevated above the oven floor, which may lead to more satisfactory cooking. However, Fisher does not specifically teach the use of a plate or dish of susceptor material.

25. Sadek teaches that the dough product is placed on a one piece tray (Column 3, lines 51-52) and has vertical fold out supports to provide a space between the package and a support surface in the microwave oven to aid with dissipation of water vapor (Column 3, lines 54-56). Sadek further teaches that placement of the food item within the cooking package and tray also means that the food items is entirely surrounded by susceptor material and preferably, susceptor material is present above, beneath and

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around the perimeter of the food which aids in uniformly browned crust (Column 7, lines 44-49). A tray is deemed synonymous with a dish or plate because it holds and supports a food product.

26. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the plate as taught by Fisher to be comprised of susceptor material, as taught by Sadek, because Sadek teaches that having a tray with susceptor material present allows the formation of a uniformly browned crust. One of ordinary skill in the art would have been motivated to place susceptor material on the plate in order to ensure that the final dough product is uniformly browned and appealing to a customer.

27. Regarding Claim 13, in the alternative, Fisher may not specifically teach the use of antenna material.

28. Fisher teaches that it is known to use an electrically conductive or reflective shield which limits the amount of microwave energy which is permitted to impinge on the susceptor material. (Column 2, lines 34-37), in order to solve the problem of excessive or uneven heat generation by microwave energy impinging on a susceptor layer. The reflective shield is deemed antenna material because it meets the disclosure set forth by applicant, which states that antenna material are typically conductive elements used to control the cooking characteristics of the package and improve the uniformity of product heating and/or browning by reflecting and redirecting microwaves (see instant application, Page 8, line 7 and 14-16).

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29. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention for the package of Fisher to have included antenna material because Sadek teaches it is known to use such antenna or reflective material to solve the problem of excessive or uneven heat generation during microwave cooking. One of ordinary skill in the art would have been motivated to use antenna material in a microwaveable package in order to ensure even and uniform heating of the food product.

30. Regarding Claims 15 and 17, Fisher teaches that foods which are particularly suited for the invention are those foods which in addition to browning and crisping are also required to rise during their cooking (Column 3, lines 9-12), however, Fisher does not specifically teach that the cereal dough product comprises yeast and the yeast-containing dough is proven before or after freezing.

31. Sadek teaches a stuffed pizza product (Column 5, lines 58-60), wherein the crust contains yeast which is a typical biological leavening agent (Column 5, lines 36-37) and also teaches that there may be one or more rising or proofing steps prior to rolling the dough (Column 5, lines 15-16). Sadek teaches that the pizza may be frozen prior to any baking or can be frozen after being partially baked. Thus, it is understood that the dough is proofed, rolled out and then frozen prior to any baking.

32. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, for the dough product of Fisher to have been one that contained yeast and was proofed before freezing because such products that require browning,

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and rising during cooking, such as pizza, contain yeast, which is a typical biological leavening agent. One of ordinary skill would have been motivated to use such a yeast-containing dough in the package in order to ensure that the dough product was able to properly rise and brown, resulting in a desired food product for consumers.

33. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (U.S. Patent No. 4,911,938) and Sadek (U.S. Patent No. 6,359,272), and in further view of Felske (U.S. Patent No. 4,743,452).

34. Fisher is relied upon as above for the rejection of Claim 1. Fisher in view of Sadek teach cereal dough comprising yeast (see Sadek, Column 5, lines 36-37) but do not specifically teach that the dough is frozen without proving.

35. Felske teaches a method for producing frozen dough without the need for pre-proofing and which can be subjected to baking without the traditional thawing procedures (Column 1, lines 16-18). Felske further teaches that one difficulty in frozen dough systems is the time requirement to proof the dough prior to freezing and high speed processing is more desirable for a more economical product (Column 1, lines 61-64). Furthermore, Felske teaches that manufacturers are hesitant to package proofed dough in containers such as bags because of the tendency of the bag to tear the dough and cause loss of entrapped gas (Column 1, lines 64-65). Non-proofed dough is not subject to such problems and can be handled on an automatic packaging line without cause for worry regarding damaging of the proofed bread (Column 1, lines 67-68 and Column 2, lines 1-2).

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36. Felske teaches that doughs, such as sweet or pizza dough (Column 2, lines 59-60), can be formed and shaped prior to packaging and freezing and upon removal from the freezer, the dough can be thawed and proofed at the same time for short times and baked without the necessity of thawing and proofing steps as separate processing steps (Column 2, lines 20-25).

37. Therefore, it would have been obvious for the yeast-raised dough taught by Fisher in view of Sadek to have been frozen without proving, as taught by Felske, because Felske teaches that packaging pre-proofed dough is time consuming, decreases the efficiency of the production process, and can result in a loss of entrapped gas if the package is torn. One of ordinary skill in the art would have been motivated to freeze the dough without proving to allow for a more stream-lined automated dough making process, thereby increasing the efficiency of the overall system.

Response to Arguments

38. The objections made to Claims 6, 9, and 15 made of record in the office action mailed on 11/10/2008 have been withdrawn due to Applicant's amendments filed on 1/27/2009.

39. The rejection of Claims 12 and 15 under 35 U.S.C. 112 2nd paragraph made of record in the office action mailed on 11/10/2008 have been withdrawn due to Applicant's amendments filed on 1/27/2009.

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40. The 35 U.S.C. §102 rejection of Claims 1-9 and 11-16 as anticipated by Mast (U.S. Patent No. 6,054,698) made of record in the office action mailed on 11/10/2008, pages 5-9, has been withdrawn due to Applicant's amendments filed 1/27/2009.

41. The 35 U.S.C. §103 rejection of Claims 5, 6, 7, 17 and 18 as obvious over Mast (U.S. Patent No. 6,054,698) in view of Goedeken (U.S.P.A. 2003/0152667) made of record in the office action mailed on 11/10/2008, pages 10-12, has been withdrawn due to Applicant's amendments filed 1/27/2009.

42. The 35 U.S.C. §103 rejection of Claim 10 as obvious over Mast (U.S. Patent No. 6,054,698) in view of Brown (U.S. Patent No. 4,626,641) made of record in the office action mailed on 11/10/2008, pages 12-13, has been withdrawn due to Applicant's amendments filed 1/27/2009.

43. The 35 U.S.C. §103 rejection of Claim 12 as obvious over Mast (U.S. Patent No. 6,054,698) in view of Fazorayer et al. (Japanese Application No. JP2215337A) made of record in the office action mailed on 11/10/2008, pages 13-14, has been withdrawn due to Applicant's amendments filed 1/27/2009.

44. The 35 U.S.C. §103 rejection of Claims 15 and 17 as obvious over Mast (U.S. Patent No. 6,054,698) in view of Paulucci (U.S. Patent No. 6,168,812) made of record in

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the office action mailed on 11/10/2008, pages 14-15, has been withdrawn due to Applicant's amendments filed 1/27/2009.

45. Applicant's arguments with respect to the rejections of Claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

46. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

47. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

48. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNA A. WATTS whose telephone number is (571) 270-7368. The examiner can normally be reached on Monday-Friday 8am-4:30pm.

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49. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

50. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. A. W./
J. Watts
Examiner, Art Unit 1794
March 10, 2009

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794